IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 370 OF 2006

IN

STAMP NUMBER MAIN NO. 2782 OF 2006

M/S. GOA ELECTRICAL AND FANS LTD., PONDA, GOA. ....Applicant

Versus

STATE, REP. THROUGH ITS PUBLIC PROSECUTOR AND ANR., ...Respondents

Mr. Jose Filipe Melo, Advocate for the Applicant.
Ms. Winnie Coutinho, Public Prosecutor for Respondent no.1.
Mr. M. S. Joshi, Advocate for Respondent no.2.

Coram:- N. A. BRITTO, J.

Date:- 13th December, 2006

ORAL ORDER

Heard the learned Counsel on behalf of both the parties.

2. The applicant is the Complainant and shall be referred to as such, herein after. The Complainant has filed an application for condonation of delay in preferring a revision to this Court against the Order dated 19.09.2003, of the learned J.M.F.C., Ponda.

3. The Complainant having prosecuted the accused under Section 138 of the Negotiable Instruments Act, 1881, the accused was convicted and sentenced under Section 138 of the Act to pay a fine of Rs.5,000/- and in default to suffer SI for 30 days. The accused did not challenge the said Order of conviction/sentence imposed upon him by the learned J.M.F.C. but the Complainant preferred an appeal for enhancement of sentence

only to the Court of Sessions, which came to be disposed of by the learned Additional Sessions Judge, by Order dated 19.07.2006. The learned Addl. Sessions Judge dismissed the said appeal as not maintainable.

4. There can be no dispute that the Order dated 19.07.2006 of the learned Addl. Sessions Judge, is revisable by this Court either at the instance of the Complainant or Suo Moto. The Complainant has taken a circuitous route to challenge the Order dated 19.09.2003 of the learned J.M.F.C. If the appeal filed by the Complainant as regards the inadequacy of the sentence was not maintainable, nothing prevented the learned Addl. Sessions Judge to have converted the said appeal into revision and examine the correctness of the Order dated 19.09.2003 as regards the inadequacy of the sentence imposed upon the accused. This is what the learned Addl. Sessions Judge ought to have done.

5. In view of the above, and considering the over all facts and circumstances of this case, the Order dated 19.07.2006 of the learned Sessions Judge (II), Panaji, is hereby set aside and the learned Addl. Sessions Judge is hereby directed to treat the Appeal filed by the Complainant as a Revision Petition against inadequacy of sentence and decide the same in accordance with law after hearing both the parties.

6. From the view I have taken, nothing survives in the application under consideration and as well as the Criminal Revision under Stamp No. 2782/2006.

7. The same stands disposed of. Both the parties are directed to appear before the learned Addl. Sessions Judge, Panaji, on 09.01.2007 at 2.30 p.m. for further proceedings.

N. A. BRITTO, J.

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